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Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo

Note verbale dated 18 May 2004 from the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of the Republic of South Africa to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1533 (2004) of 12 March 2004 concerning the Democratic Republic of the Congo and, with reference to paragraph 8 of resolution 1533 (2004), has the honour to present the attached information regarding the actions taken by South Africa to implement effectively the measures imposed by paragraph 20 of resolution 1493 (2003) (see annex).

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Annex to the note verbale dated 18 May 2004 from the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Committee

Report by the Government of South Africa to the Security Council Committee in regard to resolution 1533 (2004) on the monitoring of Member States' compliance with Security Council resolution 1493 (2003) on the Democratic Republic of the Congo

Introduction

1. The present report by the Government of South Africa is submitted pursuant to paragraph 9 of United Nations Security Council resolution 1533 (2004), in which the Council requested Member States to report to the Security Council Committee on the Democratic Republic of the Congo, on the actions they have taken to implement the measures imposed by paragraph 20 of resolution 1493 (2003) as well as any further information they may consider necessary.

2. In paragraph 20 of its resolution 1493 (2003), the Security Council:

> "*Decides* that all States, including the Democratic Republic of the Congo, shall, for an initial period of 12 months from the adoption of this resolution, take the necessary measures to prevent the direct or indirect supply, sale or transfer, from their territories or by their nationals, or using their flag vessels or aircraft, of arms and any related materiel, and the provision of any assistance, advice or training related to military activities, to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement, in the Democratic Republic of the Congo".

Action taken by the South African Government

National Conventional Arms Control Committee

3. The South African Government has, since its inauguration in May 1994, committed itself to a policy of non-proliferation, disarmament and arms control, which covers all weapons of mass destruction and extends to concerns relating to the proliferation of conventional weapons.

4. On 30 August 1995 the South African Cabinet approved an Interim Arms Control Policy. This policy forms an integral part of its commitment to democracy, human rights, sustainable development, social justice and environmental protection. The Interim Arms Control Policy was based on the Armaments Development and Production Act (Act No. 57 of 1968). In 1997 the National Conventional Arms Control Committee (NCACC) initiated a drafting process for a new Conventional Arms Control Bill in order to obtain the legal statutory authority to control conventional arms and services.

5. The National Conventional Arms Control Act (NCAC) was promulgated on 1 May 2003 and replaced the Armaments Development and Production Act (No. 57 of 1968). The Act established a National Conventional Arms Control Committee (NCACC) consisting of Cabinet Ministers. The Act enables the NCACC to ensure

the implementation of a legitimate, effective and transparent control process, which would foster national and international confidence in the control procedures.

6. The Act has laid down a set of guiding principles and criteria to be used in the assessment of conventional arms transfers. These guiding principles and criteria are based on internationally accepted norms and, inter alia, include consideration of human rights and fundamental freedoms, and the adherence to international treaties and agreements. These criteria stipulate, among others, that the NCACC must:

(a) Avoid endangering regional and international peace and stability by introducing destabilizing military capabilities into a region, which could aggravate or prolong any existing armed conflicts;

(b) Adhere to international law, norms and practices and the international obligations and commitments of South Africa, including United Nations arms embargoes; and

(c) Avoid contributing to terrorism and crime.

7. The Act makes provision for four levels of responsibility:

(a) These include a technical processing level, which is carried out by the secretariat of the NCACC;

(b) A multi-departmental review process;

(c) A departmental scrutiny process; and

(d) A control, policy and decision-making authority.

All these levels of responsibility are included in the NCACC.

8. Provision is made for an independent Inspectorate, which is to ensure that trade in conventional arms and services is conducted in compliance with this Act. The scope and authority of inspection functions has further been broadened and is more clearly defined compared to the previous Act.

9. The Act also makes provision for stiffer penalties for offenders than the previous Act.

10. The Act requires quarterly reporting to Parliament, providing an ex post facto overview of exports.

11. In addition to controlling conventional arms and services, the Act also regulates military dual-use goods. This brings the Act into line with international arms control practices such as the Wassenaar Arrangement.

12. Another important aspect regulated by the Act in the trade in conventional arms and services is controlling brokering and freight forwarding services.

13. The Act has extraterritorial powers designed to control trade in conventional arms and services of South African nationals, as well as all foreign persons registered in South Africa, abroad.

14. At the outbreak of the conflict in 1998, the NCACC imposed an embargo on arms transfers to the Democratic Republic of the Congo and other involved countries in the region and it has been maintained since then.

15. NCACC has not authorized the transfer of arms to any of the conflict groups or parties in the Democratic Republic of the Congo.

16. The Government of South Africa has authorized the deployment of the South African National Defence Force (SANDF) in the Democratic Republic of the Congo as part of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), with the necessary arms and equipment required for the task.